

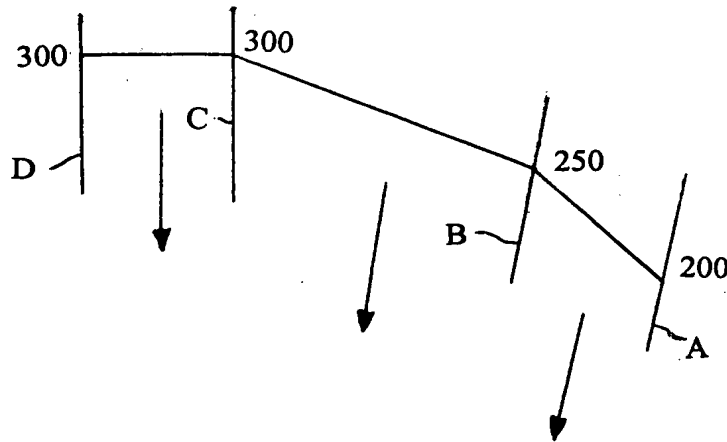
### REMARKS

Reconsideration of the application respectfully requested. Claim 2 has been currently amended to correct a typographical spelling error. Claim 1 remains as previously presented, claims 3 and 4 remain as originally presented.

Claims 1-4 stand rejected under 35 U.S.C. 102(b) as being anticipated by Roberts, U.S. Patent No. 5,357,767. The Examiner cites Roberts as disclosing the claimed invention, including the discharge velocity of the second air stream SC or TC being 1.4 times greater than the discharge velocity of the first air stream PC. The Examiner cites Roberts as disclosing that the primary air PC can have a velocity *in the range* of 200-250 fpm (referring to column 9, lines 60-65), that the secondary air curtain SC can have a velocity *in the range* of 250-300 fpm (referring to column 10, lines 8-11), and that the third air curtain TC is disclosed as having a velocity of about 300 fpm (citing column 10, lines 12-13). Based on this reading of Roberts, the Examiner reasons that if the primary air curtain PC has a velocity of 200 fpm and the secondary air curtain SC has a velocity of 280 fpm, the ratio of those two velocities is 1.4. Similarly, the Examiner reasons that if the primary air curtain has a velocity of 214 fpm and the third air curtain has a velocity of 300 fpm, the ratio of those velocities is again 1.4. Based on this reasoning, the Examiner concludes Roberts fully anticipates claim 1. Applicants respectfully traverse the rejection of claims 1-4 under 35 U.S.C. 102(b) as being anticipated by Roberts.

Applicants respectfully disagree with the Examiner's reading of Roberts. Roberts (see column 9, line 61 – column 10, line 13) discloses that the first primary air curtain PC, i.e. the innermost air curtain, is discharged at a reverse taper or air speed gradient from a discharge velocity of about 200 fpm at its back face (represented by interface A in the sketch on page 4) to a discharge velocity of about 250 fpm at its front face (represented by interface B in the sketch on page 4), that the secondary air curtain SC, i.e. the middle air stream, is discharged at a reverse taper or air speed gradient from a discharge velocity of about 250 fpm at its rear face (represented by interface B in the sketch on page 4) and a discharge velocity of about 300 fpm at its front face (represented by interface C in the sketch on page 4), and that the tertiary air curtain, i.e. the outermost air curtain, has a box profile of about 300 fpm across the span between

its inner face and outer face (represented by interfaces C and D, respectively, in the sketch on page 4).



The discharge velocity of the primary, i.e. inner, air curtain PC is about 200 fpm only at the interface A with open-front of the display case. At interface B with the secondary, i.e. middle, air curtain, the first air curtain PC has a discharge velocity of about 250 fpm, matching the velocity of the secondary air curtain SC at interface B. Ergo, the discharge velocity of the first air curtain is not a selected uniform value within the range of about 200 fpm to about 250 fpm, but rather tapers from about 250 fpm at its outer face down to about 200 fpm at its inner face. Therefore, Applicants respectfully submit that Roberts must be read to teach an average discharge velocity for the first air curtain PC of about 225 fpm, not 200 fpm.

Similarly, the discharge velocity of the secondary, i.e. middle, air curtain SC is about 250 fpm at interface B with the inner primary air curtain PC open-front of the display case and is about 300 fpm at interface C with the tertiary, i.e. outer, air curtain TC which has a uniform discharge velocity of about 300 fpm. Ergo, the velocity of the secondary air curtain is not a selected uniform value within the range of about 250 fpm to about 300 fpm, but rather tapers from about 300 fpm at its outer face down to about 250 fpm at its inner face. Therefore, Applicants respectfully submit that Roberts must be read to teach an average discharge velocity for the secondary air curtain SC of 275 fpm.

Accordingly, Applicants respectfully submit the Roberts teaches an average discharge velocity for the inner primary air stream PC of 225 fpm and an average discharge velocity for the middle secondary air stream SC of 275 fpm, and therefore teaches a ratio of the discharge velocity of the secondary air curtain to the discharge velocity of the primary air curtain of 1.222, not a ratio of at least 1.4 as taught by Applicants and recited in claim 1. Similarly, with the velocity of the outermost air curtain TC being a uniform 300 fpm, and the velocity of the first air stream PC being its average velocity of 225 fpm, the ratio of the velocity of the air curtain TC to the velocity of the innermost air stream PC is  $300/225$  or 1.33, which is clearly less than a ratio of at least 1.4 as taught by Applicants and recited in claim 1.

Applicants respectfully submit that the discharge velocity ratios of 1.22 and 1.33 as disclosed in Roberts can not be read to anticipate Applicants teaching of a refrigerated merchandiser having a first air curtain having a first discharge velocity and a second air curtain disposed outwardly of the first air curtain and having a second discharge velocity with the second discharge velocity being "at least 1.4 times greater than" the first discharge velocity, as recited in Applicants' claim 1, nor to anticipate a ratio of the second discharge velocity to the first discharge velocity in the range "from 1.4 to about 1.8", as recited in Applicants' claim 2.

Further, Applicants respectfully submit that to select 200 fpm or 214 fpm as the velocity of the inner primary air curtain PC, and 280 fpm as the velocity of the middle secondary air curtain SC, while ignoring the specific teaching of Roberts of an air speed gradient across the inner primary air curtain PC and of an air speed gradient across the middle secondary air curtain SC in order to ensure that "...the air speeds at the interface of the adjacent curtains will be about the same to reduce intermixing and turbulence" (see column 10, lines 13-15), is a misreading of the teachings of Roberts and constitutes hindsight reconstruction of the claimed invention in view of Applicants' own teachings.

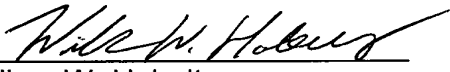
Reconsideration of the above-identified application in view of the arguments presented herein is respectfully requested. Upon reconsideration, Applicants respectfully request that the Examiner withdraw the rejection of now pending claims 1-4 under 35 U.S.C. 102(b) as anticipated by Roberts and pass claims 1-4 to allowance.

If the Examiner wishes to expedite disposition of the above-captioned patent application, he is invited to contact Applicant's representative at the telephone number below.

Applicant believes no fee is due with this response. However, if a fee is due, please charge Deposit Account No. 03-0835, under Order No. 1213\_018 from which the undersigned is authorized to draw.

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Respectfully submitted,

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